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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/023,770

12/21/2001

Davide Nicosia

19975.00

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06/16/2004

OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK, NY 100368403

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/023,770

Applicant(s)

NICOSIA, DAVIDE

Examiner

Steven L. Weinstein

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/26/04 & 3/12/04.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, and 8-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 8, 10 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ref. N (Switzerland '330) in view of Stewart (WO 95/271) further in view of Inoue (Jp. '827), Brauns-Heitmann (DE '519), Hoogveen (Ne. '182) and Yoshifuji et al ('757), further in view of Ref. U. (Capital Times) and Gajewski ('561), further in view of McDonald ('662) and Washington (Times June 27, 1991) for the reasons given in the Office action mailed August 26, 2003. Also, the rejection also employs Washington Times and McDonald as the primary and first, secondary reference.

That is, Ref. N, in view of the art taken as a whole, discloses it was conventional to provide a candy composition capable of applying make-up or imprint indicia. Claim 1 now recites that the candy composition capable of applying make-up or imprint indicia is applied to an edible chewing gum. As evidenced by the art taken as a whole, not only is it conventional to coat gum with a candy coating (e.g. McDonald, it is also known to coat candy with a substance that can be applied as make-up or imprint indicia e.g. lipstick (Washington Times). Since it was known to provide candy lipstick, and it was known to provide a composite material of candy with lipstick as a coating and it was known to coat chewing gum with candy with lipstick as a coating, and it was known to coat

chewing gum with candy, to modify the combination and substitute for the homogeneous candy lipstick, a composite material of chewing gum coated with a candy lipstick would therefore have been obvious. Similarly, employing Washington Times as the primary reference, since Washington Times teaches it was known to provide a composite of candy with a coating of lipstick, and it was known to coat chewing gum with candy, and it was known to provide candy lipstick, to modify the Washington Times and substitute one conventional core and marking substance for another conventional core and marking substance would therefore have been obvious. New claims 12-14 are rejected for the reasons given above.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Bryan (5,876,995) for the reasons given in the Office action mailed August 26, 2003.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Newsteder ('683) for the reasons given in the Office action mailed August 26, 2003.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Henderson ('351) and McClosky ('560) for the reasons given in the Office action mailed August 26, 2003.

All of applicants remarks filed February 26, 2004 and March 12, 2004 have been fully and carefully considered but are not found to be convincing. In the response filed February 26, 2004, it is urged that there is no motivation to combine the references. This is not seen to be accurate. The art taken as a whole teach candy lipstick as well

as other edible marking material. The art also teaches it was well established to provide composite, i.e., coated products, wherein a confectionary such as chewing gum is coated with a candy composition and other products wherein candy is coated with a marking composition such as lipstick so that the coating can function as a marking material and the core as a confectionary edible. To coat a conventional chewing gum with a conventional marking composition such as a candy lipstick so that one could use the coating as a marker and the core for its conventional function would therefore be fairly taught by the art taken as a whole. That is, applicant has formed a composite, each component of which is conventional, and is employing each component for its art recognized and applicants' intended function. The Washington Times article does not teach away from the invention since, as discussed above, it employs a composite of conventional materials wherein each component is used for its intended function (e.g., marking and eating) and the art taken as a whole teaches providing composite materials so that one can take advantage of each component. The amended filed March 12, 2004 makes the same argument found in the amendment filed February 26, 2004.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

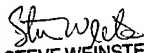
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1410. The fax phone number for the organization where this application is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S.L. Weinstein/dh
June 1, 2004

Corrected

June 2, 2004


STEVE WEINSTEIN
PRIMARY EXAMINER (1761)
6/15/04